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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/706,638

11/12/2003

Amit V. Patel

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Amit V. Patel
2289 Willoway Street
Yorktown Heights, NY 10598

EXAMINER

JACKSON, BRANDON LEE

ART UNIT

PAPER NUMBER

3772

MAIL DATE

DELIVERY MODE

04/17/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/706,638	Applicant(s) PATEL, AMIT V.	
	Examiner BRANDON JACKSON	Art Unit 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-12, 24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-12, 24-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This action is in response to amendments/arguments filed 2/28/2008. Currently, claims 1-5, 7-12, and 24-25 are pending in the instant application.

Response to Arguments

Applicant's arguments filed 2/28/2008 have been fully considered but they are not persuasive. Applicant argues the Maddox/Picolet device is not configured to immobilize any one of different body parts including a shoulder, elbow, knee, wrist and hip. However, the Maddox/Picolet device is obviously capable of being applied to the above mentioned portions/joints of the body. Moreover, the Maddox/Picolet device teaches all the elements of the claimed invention, therefore, it obviously would be able to perform the same intended uses.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

Art Unit: 3772

2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-5, 7-12, and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maddox (U.S. Patent 1,340,630) in view of Picolet et al. (US Patent 4,492,225). Maddox discloses an apparatus (fig. 1) for immobilizing an injured joint of the body comprising a first plate (35) adapted for engaging limb of the body and having an end portion. A second plate (12) adapted for engaging a body part to which the limb is connected via a joint, the second plate having an end portion. The first and second plates (35, 12) are contoured to receive a body part. A lockable joint (24, 26) connecting the first and second plates, which is a pivotable hinge having a locking mechanism (27, 28) for locking the hinge at desired orientations. The apparatus discloses at least one securing mechanism (47) attached to the first plate (35) and comprising a strap (47); and a second securing mechanism (16) attached to the second plate (12) and comprising a strap (16). The apparatus comprises compressible padding (36) attached to a concave surface of the first plate (35); and compressible padding (14) attached to a concave surface of the second plate (12). The apparatus has at least one securing mechanism comprising a strap (47) and fastener (18), of which the fastener comprises a hook and loop fastener. In view of the applicant's specifications, page 8, lines 19-21, the buckle (18) is seen to be equivalent to the hook and loop fastener. The first plate (35) apparatus is capable of being disassembled from the second plate (12). The wing nut (28) is capable of being removed, which will allow the screw (27) to be removed and the first plate (35) to be removed from the second plate

(12). Therefore, the term “capable” has been given its broadest, most reasonable interpretation and the device is capable of being disassembled. Further, being “capable” is a recitation of a function and is not a positive limitation but only requires the ability to perform. It does not constitute a limitation in any patentable sense. The first and second plates (35, 12) are connected to rods (30, 11) that have ends and are adjustable (col. 2, lines 70-97). Maddox fails to disclose the plates are flat and then curved when in use by use of alternating rigid and flexible plate segments lengthwise in the plate. However, Picolet teaches plate (1) comprises alternating rigid plate segments (15, 16, 17, 22, 23, 24) and flexible plate segments (18, 19, 25, 26) to allow the plate (1) to be concavely formed to an appendage. Therefore, it would be obvious to one of ordinary skill in the art to substitute the Maddox plate for the plate, as taught by Picolet, in order to have the plates be adjustable to better fit specific users.

The Maddox/Picolet device is obviously capable of being applied to any one of different body parts including a shoulder, elbow, knee wrist, and hip because the rigid plates are obviously capable of being applied by straps to any of the above mentioned body parts. Moreover, the Maddox/Picolet device teaches all the elements of the claimed invention, therefore, it obviously would be able to perform the same intended uses as the claimed invention.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRANDON JACKSON whose telephone number is (571)272-3414. The examiner can normally be reached on Monday - Friday 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571)272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3772

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brandon Jackson/
Examiner, Art Unit 3772

BLJ

/Patricia Bianco/
Supervisory Patent Examiner, Art Unit 3772